

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Olga Bentin	Team: Squad #9	CCRB Case #: 201603615	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 04/16/2016 12:26 AM	Location of Incident: [REDACTED]	Precinct: 121	18 Mo. SOL 10/16/2017	EO SOL 10/16/2017	
Date/Time CV Reported Tue, 04/19/2016 12:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/27/2016 10:50 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Nikolaos Kontarinis	04510	940341	SRG 5
2. POM Modesto Marte	14342	950826	SRG 5

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Matthew Fried	01790	934884	121 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Nikolaos Kontarinis	Abuse: Police Officer Nikolaos Kontarinis stopped the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
B.POM Modesto Marte	Abuse: Police Officer Modesto Marte stopped the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
C.POM Modesto Marte	Abuse: Police Officer Modesto Marte searched the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
D.POM Modesto Marte	Force: Police Officer Modesto Marte used physical force against § 87(2)(b)	[REDACTED]
E.POM Modesto Marte	Force: Police Officer Modesto Marte used physical force against § 87(2)(b)	[REDACTED]

Case Summary

On April 16, 2016, at approximately 12:00 a.m., § 87(2)(b) stopped his car at the red light located at the intersection of Forest Avenue and Crystal Avenue in Staten Island, after he left the gas station located three blocks away from the intersection. § 87(2)(b) car was in working order, and he did not commit any traffic infractions while driving from the gas station to the above named intersection.

After § 87(2)(b) stopped his car at the red light, he noticed police lights flashing in his car's rear view mirror. § 87(2)(b) placed his car in park, and noticed that two police officers, identified via investigation as PO Modesto Marte and PO Nikolaos Kontarinis of SRG 5, exited from their marked police vehicle, and walked toward his car (**Allegation A** and **Allegation B**). PO Marte approached § 87(2)(b) car from the front driver side, while PO Kontarinis approached from the front passenger side. PO Marte asked § 87(2)(b) if he was drinking. § 87(2)(b) told PO Marte that he was not drinking. PO Marte then asked § 87(2)(b) to exit his car. § 87(2)(b) refused to exit his car, and asked PO Marte why the latter wanted him to step out of the car, and why PO Marte did not ask him for his driver's license and registration. § 87(2)(b) alleged that PO Marte then placed his hand inside of § 87(2)(b) car through the rolled down front driver side window, opened the front driver side door, grabbed § 87(2)(b) left arm, and pulled him out of the car (**Allegation C** and **Allegation D**). § 87(2)(b) asked PO Marte why he was pulling him out of the car. PO Marte did not respond to § 87(2)(b).

After § 87(2)(b) was allegedly pulled out of the car, PO Marte brought § 87(2)(b) to the back of his car, and tried to place him in handcuffs by allegedly twisting his left arm behind his back. § 87(2)(b) attempted to pull away from PO Marte; however, he lost his balance, and fell to the ground with the left side of his face making contact with the concrete. PO Marte then tried to grab § 87(2)(b) hands in order to place him in handcuffs; however, § 87(2)(b) stretched out his arms in front of his body, and prevented PO Marte from placing them behind his back. § 87(2)(b) alleged that PO Marte then placed his knee on top of § 87(2)(b) back, and punched him approximately three or four times in the right side of his rib cage (**Allegation E**). § 87(2)(b) continued moving from side to side, trying to remove PO Marte's knee from his back. PO Kontarinis then came and assisted PO Marte, and allegedly placed his knee on § 87(2)(b) back as well. After approximately five or seven minutes of tussling with PO Marte and PO Kontarinis on the ground, § 87(2)(b) stopped resisting and was placed in handcuffs.

After § 87(2)(b) was placed in handcuffs, he was transported to the 121st Precinct stationhouse, before being taken to the § 87(2)(b) in Staten Island. As a result of this incident § 87(2)(b) sustained cuts and scrapes to his forehead, elbows, and knees (Board Review 7 and Board Review 8). While in the hospital, § 87(2)(b) was examined by the doctor, who cleaned his injuries, and took a chest X-Ray. § 87(2)(b) was informed by medical personnel that he was physically fine, and that he did not have any rib fractures.

§ 87(2)(b) was arrested as a result of this incident, and § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Video footage was obtained from a TD Bank located at 1600 Forest Avenue in Staten Island. Video footage does not capture any aspect of the interaction between § 87(2)(b) and the officers, and it only shows the officers' police car lights flashing in the distance. The full video recording is located in, and can be viewed from Investigative Action # 86.



TD Bank video footage.mp4

Mediation, Civil and Criminal Histories

- Mediation was not presented to § 87(2)(b) because he was arrested as the result of this incident.
- § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Board Review 2).
- This report has been submitted pending FOIL request on June 1, 2016, for any Notice of Claim filed in regard to this incident. The results of the request will be added to the case file upon receipt.

Civilian and Officer CCRB Histories

- PO Modesto Marte has been a Member of Service for four years, and has no previous CCRB complaints filed against him.
- PO Nikolaos Kontarinis has been a Member of Service for ten years, and has no previous CCRB complaints filed against him.
- This is § 87(2)(b) first CCRB complaint (Board Review 3).

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) described PO Kontarinis as a white male, who stood approximately 5'10", and was dressed in uniform. According to the Arrest Report, PO Kontarinis is listed as the arresting officer of § 87(2)(b) (Board Review 4). PO Kontarinis acknowledged stopping § 87(2)(b) car, and interacting with § 87(2)(b) on the day of the incident. As such **Allegation A** is pleaded against PO Kontarinis.
- § 87(2)(b) described PO Marte as a white male, between 30 and 40-years old, who stood approximately 6'0" tall, weighed approximately 200 pounds, with black hair, and dressed in uniform. PO Marte acknowledged stopping § 87(2)(b) car, opening § 87(2)(b) front driver side door, and interacting with § 87(2)(b) on the day of the incident. As such, **Allegations B, C, D, and E** are being pleaded against PO Marte.

Allegation A—Abuse of Authority: Police Officer Nikolaos Kontarinis stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation B—Abuse of Authority: Police Officer Modesto Marte stopped the vehicle in which § 87(2)(b) was an occupant.

On April 16, 2016, at approximately 12:00 a.m., § 87(2)(b) stopped his car at the red light located at the intersection of Forest Avenue and Crystal Avenue in Staten Island, after having left a gas station located approximately three blocks away from the above named

intersection. § 87(2)(b) was driving a silver, 2002, Toyota Camry, license plate #§ 87(2)(b) § 87(2)(b) car was in working order, and he did not commit any traffic infractions while driving from the gas station to the intersection of Forest Avenue and Crystal Avenue.

After § 87(2)(b) stopped his car at the red light, he noticed police lights in his car's rear view mirror. § 87(2)(b) did not see any police vehicle driving behind him until he noticed police lights in his rear view mirror. § 87(2)(b) placed his car in park, and saw that two police officers, identified via investigation as PO Modesto Marte and PO Nikolaos Kontarinis of SRG 5, exited their vehicle, and walked towards § 87(2)(b) car (Board Review 1).

PO Nikolaos Kontarinis testified that on April 16, 2016, he and PO Marte were assigned to patrol Sector A of the 121st Precinct. PO Marte was the driver of a marked SUV. At approximately 12:20 a.m., PO Kontarinis and PO Marte observed a gray Toyota driving eastbound on Forest Avenue in Staten Island. PO Marte was driving slightly behind the car, when PO Kontarinis observed at least on three occasions that the driver of the car, identified as § 87(2)(b) crossed the double yellow line, and could not maintain driving in his lane. When § 87(2)(b) reached the intersection of Forest Avenue and Willowbrook Road, PO Kontarinis and PO Marte turned on their police lights and siren in order to stop § 87(2)(b) PO Kontarinis and PO Marte followed § 87(2)(b) car for approximately three blocks before § 87(2)(b) eventually stopped his car in the middle of the roadway. PO Marte then used the loud speaker, and ordered § 87(2)(b) to pull his car over to the side of the road. PO Marte asked § 87(2)(b) approximately three times to pull over his car to the side of the road. § 87(2)(b) eventually complied with PO Marte's request, and pulled his car over to the side of the road (Board Review 5).

PO Marte corroborated PO Kontarinis' testimony, and stated that he and PO Kontarinis decided to stop § 87(2)(b) car because they observed § 87(2)(b) swerving his car in and out of the traffic lane (Board Review 6).

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Allegation C—Abuse of Authority: Police Officer Modesto Marte searched the vehicle in which § 87(2)(b) was an occupant.

Allegation D—Force: Police Officer Modesto Marte used physical force against § 87(2)(b)

After § 87(2)(b) parked his car, PO Marte approached his car from the front driver side, while PO Kontarinis approached from the front passenger side. PO Marte asked § 87(2)(b) if he was drinking. § 87(2)(b) replied that he was not drinking. PO Marte then asked § 87(2)(b) to step out of the car. § 87(2)(b) refused to exit his car, and asked PO Marte why he wanted him to exit the car, and why he did not ask him for his driver's license and registration. § 87(2)(b) alleged that PO Marte then placed his hand inside of § 87(2)(b) car through the rolled down front driver side window, opened the front driver side door, grabbed § 87(2)(b) left arm, and pulled him out of the car (Board Review 1).

PO Marte testified that after § 87(2)(b) pulled over to the right side of the road, he approached § 87(2)(b) car from the front driver side, while PO Kontarinis approached § 87(2)(b) car from the front passenger side. PO Marte then asked § 87(2)(b) for his driver's

license, registration, and car insurance, and explained to § 87(2)(b) that the latter was stopped by the officers because they observed him swerving his car in and out of the traffic lane. § 87(2)(b) did not provide his documents to PO Marte. PO Marte then asked § 87(2)(b) if he was drinking. § 87(2)(b) replied to PO Marte, “sir, no, sir.” PO Marte then asked § 87(2)(b) for his documents once again. § 87(2)(b) replied to PO Marte, “sir, no, sir.” § 87(2)(b) did not look at PO Marte while interacting with him. PO Marte noticed that § 87(2)(b) had red and watery eyes, and suspected that he was intoxicated. PO Marte then asked § 87(2)(b) to step out of the car, and opened the front driver side door by grabbing and turning the outside handle of the front driver side door. PO Marte stated that he did not place his hand inside of the front driver side window in order to open the front driver side door. PO Marte stated that after he opened the front driver side door, § 87(2)(b) exited the car on his own power, and he did not pull him out of the car (Board Review 6).

PO Kontarinis testified that after § 87(2)(b) pulled his car over to the side of the road, PO Marte approached § 87(2)(b) car from the front driver side door, while PO Kontarinis approached from the front passenger side. PO Kontarinis heard PO Marte ask § 87(2)(b) for his driver’s license, registration, and car insurance. § 87(2)(b) replied to PO Marte, “sir, sir, sir.” PO Marte then asked § 87(2)(b) if he was ok. § 87(2)(b) kept repeating, “sir, sir, sir.” PO Kontarinis did not hear if § 87(2)(b) said anything else to PO Marte. PO Marte asked § 87(2)(b) approximately three times for his documents, and § 87(2)(b) refused to provide them to PO Marte. PO Marte then asked § 87(2)(b) to exit his car. § 87(2)(b) did not comply with PO Marte’s request. At that particular moment, PO Kontarinis walked to the rear of § 87(2)(b) car. While standing at the rear of § 87(2)(b) car, PO Kontarinis observed that PO Marte opened the front driver side door of § 87(2)(b) car by grabbing and turning the outside handle of the front driver side door. PO Kontarinis stated that PO Marte did not place his hand inside of the front driver side window of § 87(2)(b) car in order to open the front driver side door. PO Kontarinis testified that after PO Marte opened the front driver side door of § 87(2)(b) car, § 87(2)(b) exited the car on his own power, and PO Marte did not pull § 87(2)(b) out of the car (Board Review 5).

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Allegation E—Force: Police Officer Modesto Marte used physical force against § 87(2)(b)

§ 87(2)(b) stated that after he was allegedly pulled out of the car, PO Marte brought him to the back of the § 87(2)(b) car, and tried to place him in handcuffs by twisting his left arm behind his back. § 87(2)(b) attempted to pull away from PO Marte; however, he lost his balance, and fell to the ground with the left side of his face making contact with the concrete. PO Marte tried to grab § 87(2)(b) left arm in order to place him in handcuffs; however, § 87(2)(b) stretched out his arms in front of him, and prevented PO Marte from placing him in handcuffs. § 87(2)(b) alleged that PO Marte then placed his knee on top of his back, and punched him approximately three or four times in the right side of his rib cage. After approximately five or seven minutes of struggling with PO Kontarinis and PO Marte on the ground, § 87(2)(b) stopped resisting the officers, and was placed in handcuffs. As the result

of resisting PO Marte and PO Kontarinis, which consisted of § 87(2)(b) pulling his arms away. § 87(2)(b) sustained cuts and scrapes to his forehead, right cheek, elbows and knees (Board Review 1, Board Review 7, and Board Review 8). § 87(2)(b) attributed those cuts and scrapes to the contact his body made with the ground while he was struggling with the officers.

PO Marte testified that after § 87(2)(b) exited his car, § 87(2)(b) began to walk away from him and PO Kontarinis. § 87(2)(b) walked approximately four or five feet away from PO Marte, when PO Marte ordered § 87(2)(b) to stop walking away. PO Marte, PO Kontarinis, and § 87(2)(b) were at the rear of § 87(2)(b) car, when § 87(2)(b) pulled out a “bulge” of a round shaped “package” that was approximately two inches wide from his pants pocket, and then put it in his mouth. PO Marte then ordered § 87(2)(b) several times to get the “package” out of his mouth. PO Marte stated that § 87(2)(b) then “deliberately” dropped onto the ground on his own power, and threw the “package” that was in his mouth underneath his car. After § 87(2)(b) dropped onto the ground, PO Marte and PO Kontarinis tried to place § 87(2)(b) in handcuffs. PO Marte was able to place § 87(2)(b) left arm in a handcuff; however, § 87(2)(b) began to resist the officers. While on the ground, § 87(2)(b) moved from side to side, and tried to place his arms underneath his body. PO Marte was holding onto his handcuffs so § 87(2)(b) would not use them as a weapon. While holding onto his handcuffs, PO Marte heard PO Kontarinis tell § 87(2)(b) to, “Stop refusing! Stop trying to bite me!” PO Marte stated that he did not place his knee on top of § 87(2)(b) back, and he did not punch § 87(2)(b) in his rib cage while trying to place him in handcuffs (Board Review 6).

PO Kontarinis testified that after § 87(2)(b) exited his car, § 87(2)(b) began to walk away from him and PO Marte. § 87(2)(b) was able to walk approximately two feet away from his car, when PO Kontarinis told § 87(2)(b) to stop walking away. PO Kontarinis then grabbed § 87(2)(b) by the back of his sweater, and directed him to the back of the car. § 87(2)(b) did not resist PO Kontarinis, and walked to the back of his car. While at the back of the car, § 87(2)(b) put his right hand inside of his right pants pocket, pulled out an object, (later identified by PO Kontarinis as contraband), from the pocket, and then placed it in his mouth. PO Kontarinis then grabbed § 87(2)(b) by his shoulders and held him, which caused § 87(2)(b) to spit out the contraband, which then fell under § 87(2)(b) car. PO Kontarinis stated that all of a sudden, § 87(2)(b) dropped to the ground near the trunk of his car, “deliberately” hit his head over the concrete, and said to PO Marte and PO Kontarinis, “What are you doing to me?” § 87(2)(b) then attempted to reach underneath his car in order to grab the contraband. While § 87(2)(b) was still on the ground, PO Kontarinis and PO Marte grabbed § 87(2)(b) by his shoulders, and dragged him approximately three feet away from the car, preventing him from reaching the contraband. After § 87(2)(b) was pulled away from his car, PO Marte grabbed § 87(2)(b) left arm and placed it in a handcuff. In the meantime, PO Kontarinis tried to pull § 87(2)(b) right arm from underneath his body. PO Kontarinis asked § 87(2)(b) approximately six times, “Stop resisting! Give me your arm.” § 87(2)(b) managed to turn onto his back, and attempted to bite PO Kontarinis; however, he was unsuccessful. PO Kontarinis stated that he did not place his knee on top of § 87(2)(b) back; nor did he see if PO Marte placed his knee on top of § 87(2)(b) back. PO Kontarinis testified that he did not see PO Marte punch § 87(2)(b) in his rib cage while trying to place § 87(2)(b) in handcuffs (Board Review 5).

§ 87(2)(g)

Squad: 9

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date